

160



RECEIVED

JUN 14 1994

EXEC
EXECUTIVE OFFICE

cc: Bd members
MK
Dun
BH

OFFICE OF THE
CITY ATTORNEY

CITY OF SACRAMENTO
CALIFORNIA

921 TENTH STREET
SUITE 700
SACRAMENTO, CA
95814-2717

SAMUEL L. JACKSON
CITY ATTORNEY

PH 916-264-5346
FAX 916-264-7455

THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY

June 14, 1994

DEPUTY CITY ATTORNEYS
RICHARD F. ANTOINE
RICHARD E. ARCHIBALD
DIANE B. BALTER
CATHERINE H. BROWN
SHANA S. FABER
JOSEPH MCINERNEY
KELLIE A. McNAIR
TAMARA MILLIGAN-HARMON
JOE ROBINSON

WILLIAM P. CARNAZZO
ASSISTANT CITY ATTORNEY

DELIVERED BY HAND

Walter Pettit, Executive Director
State Water Resources Control Board
c/o Division of Water Rights, Bay/Delta Section
901 P Street
Sacramento, California 95812-2000

Re: Bay-Delta Standards - Public Workshop

Dear Mr. Pettit:

The State Board's notice for the June 14, 1994, public workshop to discuss Bay-Delta Estuary standards poses the following question as "Key Issue No. 3":

What effect do upstream water projects, other than the CVP and the SWP, have on the fish and wildlife resources of the Bay-Delta Estuary?

The City of Sacramento recognizes that diverters upstream of the Bay-Delta Estuary will likely be called upon in some fashion to share in providing flows needed to meet new flow standards for the Bay-Delta Estuary. The City is willing to participate in providing such flows, provided that the City's share of the upstream "burden" is fair, equitable and gives proper consideration to the domestic and municipal use preferences, the priority doctrine and California's area of origin statutes. As noted by the California Supreme Court in National Audubon Society v. Superior Court (1983) 33 Cal.3d 419, 445-448, the public trust doctrine must be harmonized with traditional allocation principles consistent with the public interest. Similarly, any determination by the State Board to modify particular uses in order to meet water quality standards, under article X, § 2 of the California Constitution, requires that competing public policies and public interests be balanced and accommodated. United States v. Sate Water Resources Control Board (1986) 182 Cal.App.3d 82, 130. Any "sharing" formula adopted by

the State Board must therefore be consistent with these significant principles and policies to the fullest extent possible.

To assure a fair and equitable sharing formula, it is also vital that any allocation of responsibility among upstream diverters correlate to the impact that each diverter has upon the resources of the Bay-Delta Estuary, rather than simply reflecting an "across the board" allocation based on the amount of water diverted. In sharp contrast to the obvious impacts caused by water exports which directly reduce the amount of water available to the Bay-Delta Estuary (such as those made by the SWP, CVP, and other urban water agencies which rely on exported water), the amount of water diverted upstream for in-basin use is not an accurate measure of the impact that upstream diverters have upon the Bay-Delta Estuary, because much of the water diverted from the Sacramento River and its tributaries for in-basin use is returned to the River before entering the Bay-Delta Estuary. Similarly, upstream diverters should not be held responsible for providing flows simply in proportion to the capacity of storage reservoirs which are available to serve their diversions, because there is not necessarily any direct correlation between upstream reservoir capacity and impacts on so-called "unimpaired" flows which would enter the Bay-Delta Estuary if the reservoir did not exist.

The City appreciates the opportunity to submit the above comments for your consideration. For further information relating to the City's diversions and use of surface water, please refer to the testimony and evidence presented by the City on July 15, 1992.

Very truly yours,



JOE ROBINSON
Deputy City Attorney

cc: 20 copies provided